In the High Court of Punjab and Haryana, Chandigarh

I.T.R. No. 82 of 1989

Date of Decision: 9.5.2007

The Commissioner of Income Tax, Jalandhar …Petitioner

Versus

M/s Ess Ess Kay Engg. Co. (P) Ltd., Kapurthala …Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. S.K. Garg Narwana, Advocate,
for the revenue.

Mr. S.K. Mukhi, Advocate,
for the assessee.

JUDGMENT

M.M. KUMAR, J.

This order shall dispose of I.T.R. Nos. 82 of 1989, 64 of 1992, 18 and 19 of 1993 as identical questions of law have been raised. The controversy in the present bunch of references has emerged out of the orders passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal'), in the following cases:-

Sr. No.	I.T.R. No.	Tribunal's order dated	Arising out of	Assessment Year
1.	82 of 1989 (CIT v. M/s Ess Ess Kay Engg. Co. (P) Ltd., Kapurthala)	7.5.1987	I.T.A. No. 30/ASR/1987	1981-82

2.	64 of 1992 (CIT v M/s Ess Ess Kay Engg. Co. (P) Ltd., Kapurthala)	14.9.1990	I.T.A. No. 263/ASR/1990	1979-80
3.	18 & 19 of 1993 (CIT v. M/s Ess Ess Kay Engg. Co. (P) Ltd., Kapurthala)	21.9.1992	I.T.A. No. 704 & 705/ASR/ 1987	1982-83 & 1983-84

The common questions of law, which have arisen in these references are as under:-

"1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in deleting the disallowance made representing value of perquisite of concessional rate of interest charged on borrowings from Managing Director (29610/-) and Meeting Fees (2,400/-) which are clearly hit by proviso to section 40A(5)/40A(6) of the Income-tax Act, 1961?"

2. Whether on the facts and in the circumstances of the case and keeping in view the provisions of section 40(c)(A) of the Income-tax Act, 1961, the Income-tax Appellate Tribunal is right in law in holding that amount of Rs. 2,400/- being the Director's Meeting fee over and above the total

emoluments of the Director amounting to Rs. 72000/- is allowable?"

In order to put the controversy in proper perspective, the facts are being stated from I.T.R. No. 64 of 1992. As per the statement of the case, the assessee is a Private Limited Company dealing in manufacture and sale of electrical accessories and porcelain fuse units. For the assessment year 1979-80, the assessee filed its return on 31.12.1979 declaring its taxable income at Rs. 1,76,680/-, which was subsequently revised on 23.2.1982, declaring taxable income at Rs. 1,82,180/-. The assessing officer vide his order dated 28.2.1982 framed the assessment on the total income of Rs. 2,81,565/- after making additions, inter alia, on account of disallowance under Section 40A(5)/40A(6) as well as disallowance on account of concessional interest charged from the Managing Director on the borrowings/drawings. The assessee filed an appeal before the Commissioner of Income Tax (Appeals), Jalandhar, who vide his order dated 18.2.1987, allowed the appeal of the assessee, inter alia, by deleting the additions on account of disallowance made under Sections 40A(5)/40(A)(6) and 37(3A) and concessional interest charged from the Managing Director on the borrowings/drawings. The Tribunal upheld the order of the CIT (A).

The matter is no longer res integra. A Division Bench of Andhra Pradesh High Court in the case of **Commissioner of Income Tax v. Vazir Sultan Tobacco Co. Ltd., (1998) 173 ITR 290**, has taken the view that the difference between the concessional rate of

interest and the market rate of interest on loans advanced to employees for building houses was not to be considered as a perquisite for the purposes of Section 40(c). Hon'ble the Supreme Court in the case of **Commissioner of Income Tax v. Indian Engineering and Commercial Corporation P. Ltd., (1993) 201 ITR 723**, has observed that in the case of Directors, who are also employees, both the provisions are attracted. Likewise, for determining permissible expenditure which is outside the ceiling limit, both these ceilings would be applicable. For the aforementioned proposition reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of **Commissioner of Income Tax v. Continental Construction Ltd., (1998) 230 ITR 485**. Accordingly, we confirm the view taken by the Tribunal in upholding the order of the CIT (A), which is consistent with the view expressed by the Division Bench of Andhra Pradesh High Court in the case of Vazir Sultan Tobacco Co. Ltd. (supra) and the Division Bench judgment of Calcutta High Court in the case of **Indian Oxygen Ltd. v. Commissioner of Income Tax, (1994) 210 ITR 274**. Therefore, the question is decided against the revenue.

A photocopy of this order be placed in the file of the connected cases.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)

May 9, 2007 **JUDGE**
Pkapoor